

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
NU-LOOK SPECIALISTS, INC.	:	DETERMINATION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period March 1, 1982	:	
through February 28, 1985.	:	

Petitioner, Nu-Look Specialists, Inc., 10 Adler Drive, East Syracuse, New York 13057-1219, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1982 through February 28, 1985 (File No. 802475).

A hearing was held before Joseph W. Pinto, Jr., Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 15, 1987 at 9:15 A.M. Petitioner appeared by Pinsky & Pliskin (Roy Pinsky, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the work performed by petitioner, i.e., installing new kitchen cabinet doors, hinges, pulls and drawer fronts, and applying veneers to cabinet stiles, rails and sides, constituted the rendering of a capital improvement to real property for purposes of Article 28 of the Tax Law.

FINDINGS OF FACT

1. On May 30, 1985, the Audit Division issued to petitioner, Nu-Look Specialists, Inc. ("Nu-Look"), a Notice of Determination and Demand for Payment of Sales and Use Taxes Due setting forth total tax due in the sum of \$28,040.56, plus interest of \$5,825.77, for a total amount due and owing of \$33,866.33. The foregoing assessment was issued as the result of a field audit which was commenced on or about February 13, 1985. During the course of the audit, an

Advisory Opinion was requested and received by petitioner from the Technical Services Bureau of the Department of Taxation and Finance, which affirmed the Audit Division's position herein that the work performed by petitioner in its business operations is subject to sales tax. Subsequent to the issuance of the Advisory Opinion on October 31, 1983, a prehearing conference was held and it was agreed between the Audit Division and petitioner that those projects conducted by petitioner prior to the issuance of the Advisory Opinion would not be subject to sales tax if a capital improvement certificate for said services could be produced by petitioner. Upon examination of petitioner's books it was determined that petitioner did have a number of the capital improvement certificates and, therefore, the amount asserted in the original notice of determination and demand was reduced to \$6,076.58, \$1,742.84 of which was related to use tax on expense items and purchases of fixed assets, which tax was not in dispute. Petitioner signed and filed a partial Withdrawal of Petition and Discontinuance of Case with regard to the amount of tax found due on expense items and fixed assets and proceeded to hearing on the sole issue of capital improvements, the disagreed amount being \$4,333.74 plus minimum interest.

2. Both petitioner and the Audit Division agreed that the issue was whether the work performed by petitioner constituted a capital improvement to real property, thereby making the assumption that the cabinets upon which the work was done were part of the real property.

3. Nu-Look operates a business which updates and improves kitchen cabinets through a process of removing existing doors and drawer fronts and replacing those drawers and doors with new ones chosen by the customer. The total exterior surfaces of the cabinets, including the stiles, rails and face frames, are laminated to match the new doors. Additionally, new hinges and cabinet pulls are attached. The laminated surfaces are applied with a bonding cement and can only be removed with damage to the underlying cabinets. A typical job lasted approximately 2½ to 3 days. The product, once installed, came with an unlimited lifetime warranty for the life of the home.

4. Once the materials were installed in a home, they could not be recovered without causing irreparable damage to the laminates and in some cases to the cabinets.

5. Petitioner demonstrated that a "cabinet fronts" job or refacing is a significant and substantial addition to the value and salability of a home in the same way tearing out and replacing old cabinets would be. It was also demonstrated that the kitchen is of primary importance in the salability of a home; that money invested in a kitchen has the greatest impact upon the home's value; and that a kitchen renovated by Nu-Look would result in a substantial addition to the value of the residence.

SUMMARY OF PETITIONER'S POSITION

6. Petitioner disagrees with the Audit Division's characterization of its work as reconditioning work. It does agree that the issue is whether or not the work performed by petitioner constituted a capital improvement to the real property. In furtherance of this position, petitioner contends that the guidelines or criteria set forth in the regulations, with regard to the determination of whether or not work performed constitutes a capital improvement, were never applied to its work.

CONCLUSIONS OF LAW

A. Tax Law § 1105(c)(5) provides, in pertinent part, for a tax on:

"The receipts from every sale, except for resale, of the following services:

* * *

(5) Maintaining, servicing or repairing real property, property or land as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real

property, property or land by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter...."

B. Tax Law § 1101(b)(9) defines capital improvement as an addition or alteration to real property which:

"(i) Substantially adds to the value of the real property or appreciably prolongs the useful life of the real property; and

(ii) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and

(iii) Is intended to become a permanent installation."

C. The regulations at 20 NYCRR § 527.7(a)(1) state, in pertinent part, as follows:

"(a) Definitions. (1) Maintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition. Among the services included are services on a building itself, such as painting; services to the grounds, such as lawn services, tree removal and spraying; trash and garbage removal and sewerage service and snow removal."

D. The work performed by petitioner was maintaining, servicing and repairing as those terms are used in the regulation set forth at 20 NYCRR § 527.7(a)(1). The application of laminates and installation of new doors, hinges and pulls are elements of a reconditioning process which either kept the cabinets in a condition of fitness or restored it to said condition. Although petitioner demonstrated that the services it performed added to the value of the real property, that the process might cause material damage to the cabinets if it was removed, and that the process was intended to be permanent in nature, it has not carried its burden of showing that the services were capital improvements to real property. The cabinets were merely restored to their original value, or some other value which was not determined at hearing. The work performed by petitioner was cosmetic in nature, restoring the cabinets to their new or original condition of fitness. Accordingly, receipts from the service provided by petitioner are subject to

the sales tax imposed under Tax Law § 1105(c)(5).

E. The petition of Nu-Look Specialists, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated May 30, 1985, as modified in accordance with Finding of Fact "1" above, is sustained.

DATED: Albany, New York
February 25, 1988

ADMINISTRATIVE LAW JUDGE